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COMMISSIONER FOR PATENT
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

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DIRECTOR
TECHNOLOGY CENTER

Paper No. 15

BERNARD VINING
6419 SOUTH TROY STREET
CHICAGO IL 60629

In re Application of
Bernard VINING, et al.
Application No. 09/747,268
Filed: December 26, 2000
For: **MULTIPLE AREA SMOKE DETECTOR
SYSTEM**

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed December 13, 2004, requesting withdrawal of the holding of abandonment of the above-identified application.

The above-identified application became abandoned due the applicant's failure to timely respond to an Office communication mailed November 25, 2003. A Notice of Abandonment was mailed August 10, 2004.

Petitioner asserts that a proper response was timely filed on December 19, 2003. In support of the petition, petitioner submits a copy of the response, a copy of the Express Mailing Label No. ET343547110US.

The filing of papers and fees by Express Mail is covered by 37 C.F.R. § 1.10. 37 C.F.R. 1.10(e) states:

"Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) the petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) the number of the "Express Mail" mailing label was paced on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) the petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(30) of this section that the requested filing date was the date the correspondence was deposited in the "Express mail Post Office to Address" service prior to the last scheduled pickup for that day; and

(4) the petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS."

Applicant's petition does not satisfy the requirements of 37 CFR §1.10 (e) given that the "Express mail" mailing label that was provided with the petition, does not include a "date-in" indication.

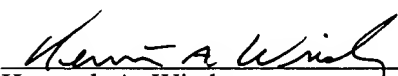
37 CFR §1.10 Filing of correspondence by "Express Mail.", (a)-(b) state:

- (a)
 - (1) Any correspondence received by the U.S. Patent and Trademark Office (USPTO) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed with the USPTO on the date of deposit with the USPS.
 - (2) The date of deposit with USPS is shown by the "date in" on the "Express Mail" label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the USPTO receipt date as the filing date. See § 1.6(a).
- (b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

For the reasons stated above, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

The petition is **GRANTED**.

The application file is being forwarded to the Technology Center's Technical Support Staff for entry of the response filed with the petition. From there, the application will be forwarded to the examiner for appropriate action in due course.


Kenneth A. Wieder
Special Programs Examiner
Technology Center 2600
Communications